IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 585 OF 2002

M.P. Lunawat .... Petitioner

Vs.

V.D. Shitole & Others .... Respondents

Mr. L.H. Patil for the Petitioner
Mr. Vijay Peshave for respondent nos. 1 to 6.
Mr. Y.S. Shinde, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 7TH JUNE, 2007
P.C.

1) Rule. Rule returnable forthwith and with consent of the learned counsel for the parties, the matter is taken up for final hearing immediately.

2) Heard Mr. Patil, learned counsel for the Petitioner and Mr. Peshave, learned counsel for respondent nos. 1 to 6.

3) It appears that original accused no. 7 Yashwant Chintaman Datar in Regular Criminal Case no. 1978 of 1981 in the Court of Judicial Magistrate, F.C., Court No.7, Pune was the original owner of the disputed property. About that

property, he had some dispute with one Vishwanath Puranmal Modi and said accused no. 7 Datar had filed a Civil Suit against said Modi. In that dispute, High Court Receiver was appointed about land gat no. 265/267. Pending that suit, wife of the present petitioner claimed to have purchased the said property from accused no. 7 Datar. The complaint was filed by the present petitioner alleging that on 30/11/1981 the respondent nos. 1 to 6 and said accused no. 7 Datar had illegally trespassed on the said property which was in possession of the wife of the petitioner and at that time they had assaulted and caused injuries to complainant and others. On his complaint, criminal case no. 1978 of 1981 came to be registered under Section 323, 342, 447, 448, 504 and 506(II) r/w 34 of Indian Penal Code. The petitioner, being the complainant, was called upon to lead evidence before framing of charge. Prosecution had examined in all four witnesses. After recording of evidence and hearing the parties the learned Magistrate discharged all the accused persons holding that the complainant was not in possession of the property and there was no material to show that the offence was committed.

4) Against the order of discharge, the

petitioner filed Criminal Appeal no. 149 of 1996 before the Sessions Court, Pune. However, later on finding that the appeal against acquittal was not tenable, the petitioner made an application to convert that appeal into revision. After hearing the parties, the learned Additional Sessions Judge, Pune rejected that prayer and also dismissed the appeal by the judgment dtd. 7th Jan. 2002. The learned Additional Sessions Judge observed that in view of the evidence on record, the property was in possession of the Court Receiver, since before the date of alleged offence and therefore neither the complainant nor his wife was in possession of the suit property. Being aggrieved by the same order, the petitioner has filed this writ petition under Article 227 of the Constitution.

5) Learned counsel for the parties have taken me through copies of the complaint, evidence led by the complainant before the trial court and the order passed by the learned Additional Sessions Judge.

6) Admittedly against the order of discharge no appeal would lie. The discharge order was passed in 1996 and instead of filing the revision application, criminal appeal was filed. That

appeal was pending for number of years and it appears that shortly before hearing of the appeal, request was made to convert that appeal into revision. However, the learned Additional Sessions Judge found that taking into consideration the facts of the case, it was not necessary to consider the request for conversion of appeal into revision.

7) It is clear from the record that accused no. 7 Datar, who had allegedly assigned his rights over the suit property to the wife of the present complainant, was himself not in possession of the property since before 30/11/1981. Admittedly in the suit filed by said Datar, the property was put in possession of Court Receiver. Therefore the complainant could not make a grievance that the accused persons had committed an offence of trespass etc. by entering into the said property on 30/11/1981. At the most the complainant could approach the Court Receiver, who could take action as per the law. The evidence also revealed that except the trespass on the suit property, nothing more was done and therefore there was no material to show that the alleged offences had been committed. Taking into consideration these facts, the trial Court passed an order of discharge and the learned Additional Sessions Judge also appears

to have concurred with the trial Court in respect of the facts and circumstances of the case.

8) In view of the facts and circumstances, I do not find any reason to invoke extraordinary writ jurisdiction under Article 227 of Constitution of India. The Petition stands dismissed.

8) Rule discharged.

(J.H. BHATIA, J.)